IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21705 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAYUR RATILAL DAVE - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR ASIT B JOSHI for Petitioner(s) : 1,
MR. K.L.PANDYA, AGP for Respondent(s)
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

Date : 25/11/2005

ORAL JUDGMENT

1.Draft Amendment allowed.

2.RULE. Mr. K.L.Pandya, learned AGP waives services on behalf of the respondents. With the consent of the

learned advocates, petition is finally heard today.

3. The petitioner, the legal heir of deceased Ratilal Nanalal Dave has filed this petition challenging the orders dated 30th June 2003 and 25th June 2004 passed by the Secretary (Appeals), Revenue Department – Respondent No.1 herein. The petitioner also has made a grievance that the Deputy Secretary, Revenue Department has not taken any decision on the representation/application dated 23.9.2004 in the nature of review filed by the petitioner seeking to regularise the alleged breach of condition on payment of premium and on penalties.

4. It is the case of the petitioner that during the erstwhile State of Junagadh, certain provisions were made by passing Resolution Nos. 2472 dated 5.3.1912 and 2492/84 dated 5.6.1928 for the proper maintenance of the land which is situated within the boundary of Junagadh State revenue limits and the forest department. Under the aforesaid Resolutions, the lands were allotted for growing trees and also for maintenance of the trees on these lands on condition to pay revenue (dasturi) to the Government.

The land admeasuring 20 gunthas situated at Junagadh Talpad area, near Dharagadh Road (known as Ambawadiyu), Junagadh came to be allotted to one Shri Pathan Daulatkhan Alamkhan (allottee) for growing Mango trees by the erstwhile rulers of Junagadh State. It is the case of the petitioner that in the subject land, which is also known as Ambawadi, wherein the allottee has grown almost more than 25 Mango trees. That all the revenue (dasturi) in respect of the growing trees was paid by the allottee of the land in the revenue account

no. 310 maintained by the respondent authorities.

In the year 1986, out of total Mango trees grown by the allottee, 2 Mango trees were given by him to one Shri Rathod Rajabhai Jesangbhai to maintain these Mango trees. It appears that the said Rathod Raja Jesangbhai made some kachcha hut, well and kachcha wall fencing for the maintenance of land, trees and water pump as also for the protection from animals. Subsequently, Mango trees were purchased by the petitioner from the original allottee by registered sale deed dated 8.10.1992 for a share consideration of Rs.5000/-. It is submitted by the petitioner that by virtue of the sale deed he got the right to use the kachcha hut and kachcha wall fencing made for the purpose of maintenance of land, trees and water pump as also for the protection from the animals.

After a period of 10 years, i.e. on 21.1.2002, the Collector, Junagadh – the Respondent no.2 herein issued a notice, purportedly exercising powers under Section 79(A) of the Bombay Land Revenue Code, 1879, for the alleged unauthorised occupation and use of the subject land on two grounds:-

(i) The petitioner has constructed a house on the subject land for residential purpose and,

(ii) The petitioner is in illegal possession of the land by illegal transfer of the land.

The Respondent no.2 passed an order on 11.6.2002 canceling the grant of (Fal-Dasturi) trees in favour of the petitioner. The petitioner being aggrieved by the said order preferred a revision application before the State Government. The Respondent No.1 by his order dated 30.6.2003 – 25.6.2004 rejected the revision

application. It is the contention of the petitioner that the revision was rejected on extraneous grounds which were not there before the Respondent No.2 and not even in the notice issued by the Respondent no.2. The petitioner made representation dated 23.9.2004 and subsequently another representation on 6.8.2005 before the Respondent No.4, pointing out the fact that earlier in a case of similarly situated persons, the Collector has permitted the permanent transfer of Fal-Dasturi following various State Government Resolutions. As the Respondent No.4 has not replied any of the representation, the Petitioner has approached this Court by way of the present petition.

5. When the petition was listed before this Court on 27.10.2005 for admission, upon a statement made by the learned advocate for the petitioner namely that the petitioner would remove the construction whether kachcha and/or pakka, if any, surrounding nearby trees in question, within a period of 2 weeks, this Court issued notice to the Respondents. This Court also directed the Respondent No.2 – Collector and/or Respondent No.3 – Mamlatdar, Junagadh to submit report in the matter on or before returnable date so that the case of the Petitioner can be considered.

6. Today, when the matter is called out for hearing, learned AGP Mr.K.L.Pandya produced the forwarding letter written by Collector dated 23.11.2005 together with the panchnama carried out by Circle Officer, Junagadh. On perusal of the panchnama, it appears that in the land in question there is a kachcha waranda of stones and fencing and a well. The petitioner has also filed Affidavit dated 12.11.2005 wherein he has stated

that in pursuance of the order passed by this Court, a kachcha room constructed by him for the purpose of storing agricultural instruments and pesticides has been removed by him and at present no construction is there. In view of this the case of the petitioner now requires consideration.

7. Learned advocate Mr. Asit B. Joshi for the petitioner submitted that the authorities below have committed an error by holding that; by registered sale deed the original allottee has transferred the land in question along with the rights and interest of growing Mango trees in favour of the petitioner. A bare perusal of the said deed dated 8.10.1992 makes it clear that only rights of growing and maintenance of trees has been transferred in favour of the petitioner. The learned advocate made it clear before me that so far as the ownership of the land is concerned, the petitioner will not claim any ownership right with respect to the land in question and shall abide by the reservations made by the erstwhile Junagadh State that the ownership right of the land shall remain with the Government. The learned advocate, by inviting my attention to the draft amendment, submitted that it is the policy of the State government to permit the transfer of the Fal-Dasturi and infact the Collector has permitted the transfer on permanent basis in the case of some similarly situated persons. In view of this, it was submitted that the representations of the petitioner, which are pending before the Deputy Secretary, State of Gujarat, wherein the petitioner has pointed out the said facts, are required to be considered, as, by not considering the same till the date, is against the prevailing policy of

the State Government and also violative of Articles 14 and 19 of the Constitution of India.

8. The learned AGP Mr. K.L.Pandya, on the other hand supported the order - Annexure-A passed by the Respondent No.1 by contending that the petitioner is in illegal possession of the land by illegal transfer of the land.

9. Having gone through the contents of the petition as well as the orders passed by the authorities, I am of the view that the contention raised by the learned advocate for the petitioner has some force. In view of the statement made before this Court by the learned advocate for the petitioner namely that the petitioner will not claim any ownership of the land and will abide by the Resolutions made by the erstwhile Junagadh State, that the ownership right of the lands shall remain with the Government and the petitioner will have no better right than the original allottee on the land in question, the case of the petitioner is required to be considered along with the case of similarly situated persons. The petitioner has pointed out that the Collector in his earlier order dated 29.5.1982, after considering the Resolution No. JNN/3966/A dated 27.11.1969, transferred the land of original allottee Shankarlal Chaganlal Purohit in favour of Ramde Malde Godhaniya. In view of this, I am of the opinion that the case of the petitioner is also required to be considered bearing in mind the said order.

As stated above, since the two representations of the petitioner making the similar request are pending before the Secretary, Revenue Department, it would be just, fit and appropriate that the said authority may

consider the representations and take appropriate decision in the matter.

10. In the result, this petition is allowed. Orders – Annexure-A and Annexure-D passed by the first and second respondents respectively are set aside. The matter is remanded to the Secretary, Revenue Department, State of Gujarat with a direction to decide the representations dated 23.9.2004 and 6.8.2005 made by the petitioner. The said authority is directed to decide the representation as early as possible and preferably within two months from the date of the receipt of the writ of this Court, bearing in mind the observations made hereinabove and in accordance with law.

Rule is made absolute with no order as to costs.

Direct service permitted.

(Kshitij R. Vyas,J)

Jayanti*